THE

TRUE STATEMENT

OF THE

CHURCH LEASEHOLD QUESTION.

LONDON:
LONGMAN, BROWN, GREEN, AND LONGMANS,
PATERNOSTER-ROW.

1849.

LONDON:
SPOTTISWOODES and SHAW,
New-street-Square.

THE

TRUE STATEMENT,

&c.

A ROYAL Commission having been recently appointed to inquire into the most beneficial management of episcopal and capitular estates and incomes, with due regard to the just and reasonable claims of the lessees, a committee of members of both Houses of Parliament has been formed, for the purpose of communicating with the lessees of church property, in order to the submitting of evidence to that commission; and, in consequence, meetings of lessees have been held, and local committees have been formed in various parts of the country. It may be presumed, in the mean time, that the lessors are not neglecting their own interests; for the interests of the two parties, if intemperately urged by either, are at variance.

The subject is, indeed, of much importance, and well deserving of the immediate attention of the Legislature. There never, perhaps, was a time so favourable for its settlement, never a Parliament so likely to settle it equitably, as the present time and Parliament. But it requires some previous discussion, free and fair discussion. And to that end,

and for the better information of those members of either House who may not yet have considered it, a faithful representation of the question is necessary, lest some wrong should inadvertently be done to the one or to the other of the parties concerned.

With this object in view, the writer will refrain from any direct reference to publications containing extreme opinions on either side, from any controversial argument, and, as he hopes, from any controvertible statement. What is to be decided with good faith must be treated without partiality; and it shall be as concisely treated as regard to perspicuity will permit.

It appears that the system of granting leases of church property for forty years, or for twenty-one years, or for three lives, on the stipulated payment of certain annual rents, was established by law before the middle of the reign of Elizabeth. It seems probable that those rents represented, or nearly represented, the then annual value of the several estates subject to them. And it is observed that in the statutes of Elizabeth (as well as in more recent statutes on the same subject) provision was always made for the reservation of those rents, and that their augmentation was also contemplated.* No other form of payment by the lessee was therein recognized.

* 13 Elizabeth, c. 10. "Whereupon the accustomed yearly rent *or more* shall be received, and payable yearly during the said term." 14 Eliz. c. 11. "No lease (of houses) shall be permitted without receiving the accustomed yearly rent *at the*

Nevertheless, the practice of letting those leases by fine arose very shortly afterwards. It was found extremely profitable to the actual possessors; it was never by any law prohibited; and it continues to be the common practice at this day.

In explaining the exact nature of the lease by fine, it will be best to take the most familiar form of lease, that for twenty-one years renewable at the end of seven years; for on that tenure the greater part of the episcopal and capitular lands is held, and for a very long period has been held.

It very seldom happens that these leases are allowed to expire. When they do so, they are commonly sold for their marketable value. By far the more usual process is, renewal at the end of the seventh year; and in many instances inducements are held out to the lessee to renew at that time, by calculating the fine to be then paid at a lower proportional rate, than if he were to defer the renewal till the succeeding year, and so on for the years following.

Let us now consider the meaning of this renewal. Suppose the tenant to renew in 1842; he then has his twenty-one years' lease, from 1842 to 1863, the end of the tenure. In 1849 seven years of it have elapsed, and he desires to extend it for seven years longer — that is, from 1863 to 1870. The usual method of so doing is as follows: the pro-

least." The writer has not observed any mention of fines in any act relating to ecclesiastical property, previous to 39 & 40 George III. c. 41.

perty is valued by the agent of the lessor; for on every renewal there is a fresh valuation; and its annual value is fixed, as it would be let at rack rent, subject to the payment of ordinary rates and taxes; and also to the additional consideration, that the repairs of the houses and other buildings are to devolve on the lessee. The fine is then fixed at two years' rental.* This is paid forthwith; and on the payment the lessee adds the seven years to the duration of his lease.

The lease seldom or never contains any particular stipulation concerning the management or improvement of the property; never any clause guaranteeing any right of renewal to the lessee, or conferring any sort of tenure, other than the usual leasehold tenure. A rent is reserved, bearing a very small proportion to the present value of the estate.

Suppose the property to be worth, after the above-mentioned charges are deducted, 100*l.* a year, and we shall understand more accurately what the nature of this transaction really is. The fine paid on renewal is 200*l.* That is to say, the lessee pays down 200*l.* in 1849, in order to hold property, then worth 100*l.* a year in rent, for the seven years between 1863 and 1870; or, in other words, in return for 200*l.* advanced in 1849, he

* The practice varies in different sees and chapters, but the two years' rental is assumed, in calculations, as the average in regard to lands. The fines on houses are fixed at a somewhat lower rate.

receives, between 1863 and 1870, after repairs, rates, and taxes are paid, a clear 700*l.*

It is here assumed that during the fourteen years' tenure the property shall not have been improved, and that its value shall remain in 1863 only what it is in 1849. If otherwise, the lessee's net receipts during the seven years in question will exceed 700*l.* That excess may have been occasioned by some outlay on his part, which has not entered into the above calculation. It may also have arisen from other circumstances, such as the construction of harbours, or of railways, or of other works of a public nature, in the immediate vicinity of the property. On the other hand, the property may have been deteriorated; but this less commonly happens.

Such, then, is the position of the lessee. The position of the lessor is the reverse of it. In order to obtain 200*l.* clear in 1849, he resigns, for the seven years between 1863 and 1870, a property worth 100*l.* a year. He anticipates, by a period of from fourteen to twenty-one years, the rent of his estate, and consequently does not receive a third part of it. He extracts from it now money which will not be due till several years hence, — he lives on money borrowed in long anticipation of his legitimate revenue, — and he must pay interest accordingly.

It is only necessary to state thus simply, and without the mystification of tables, and abstruse and contested calculations, the true nature of this

tenure, in order to make manifest its exceeding badness.* Nevertheless, the practice has been handed down from generation to generation; and it now supplies, in many instances, the principal, if not the only source of revenue to what are called the dignities of the church. Any immediate unconditional change in the nature of this tenure would consequently be a ruinous interference with the rights of property, exercised in a manner never prohibited by law, and long recognized by the legislature.

Meanwhile, during this period of about three centuries, the lessee has acquired what he considers to be an interest in the property. It is not indeed asserted that he can legally compel the lessor to renew his lease, either at its expiration, or at the end of the seventh year, or at any other time. If the lease be renewed, it is not asserted that he can claim the former conditions of tenure; these, on the contrary, are constantly altered, according to the altered value of the property, or according to the will of the lessor.† It is not asserted that on

* The lease on lives is another form of lease by fine, and it stands on the same principle of anticipation as the twenty-one years' lease, or the forty years' lease — only it exhibits that principle in a still more objectionable shape. To a more improvident anticipation of the rent of the estate it adds a sort of speculation in mortality, in which a spiritual person can scarcely engage without some repugnance.

† The number of years' rental on which the fine is calculated has been raised by some lessors within the last fifty years. Others, possibly all, continually exercise the right of excepting or reserving portions of property on renewal; and, where they think proper, of refusing the renewal altogether.

renewal the lessor may not except from the lease any portion of the property which it may suit him to except, for any legal purpose to which he may choose to apply it. And if the lease be allowed to expire, the lessee does not pretend to any further interest in the estate: it returns unfettered to the proprietor. Nevertheless, during the tenure, he claims some sort of ownership, beyond the mere value of the term, in the property which he holds, and this, without attempting to define it, he generally calls a beneficial interest.

It is most important, then, to examine on what this interest, real or supposed, is founded. The arguments usually advanced in its support may be placed under two heads: —

I. The long and almost unrestricted exercise of the rights of ownership, and performance of the duties of ownership, by the lessee.

II. The confidence, justified by prescriptive usage, interrupted by comparatively few exceptions, that the lease, at the accustomed period, and on somewhat similar terms, will be renewed.

I. It is alleged, with perfect truth, that the lessee stands, for all ordinary purposes, in the position of a proprietor. He cultivates the property as he thinks fit. The expence of the repairs of old buildings, of the erection of new buildings, of roads, fences, drains, of all that may be necessary to make the estate productive and profitable,

falls on him.* To his skill and enterprise entirely, and to his capital mainly, it owes any improvement that it may receive. The owner seldom or never interferes, except at the end of the seventh year, when he receives by anticipation that proportion of the rent of his estate, which necessity, founded on the long continuance of a pernicious practice, compels him to accept. Hence it has come to pass, that the lessees sometimes regard themselves more in the light of proprietors whose estates are subject to a charge—variable, indeed, but within customary limits variable,—than as tenants, having a determinable interest in the property.

But before the Legislature shall take the same view, they will weigh, among many other considerations, one of which the lessees naturally lose sight—the moderate amount of the payment made by the tenant as compared with the annual value of the estate. When he advances the septennial fine, he knows exactly what duties and burdens he undertakes, and with what expectation he undertakes them. And that the tenure, such as it is, is to him most desirable, is shown by his almost unvarying anxiety to renew the lease at the accustomed period.

They will likewise bear in mind, that, though the duties of cultivation fall altogether on the

* In some instances, perhaps in many, the expense of any recent outlay on landed property is considered by the lessor in the setting of the next following fine; while important improvements in house property are not valued by the lessor, in augmentation of fine, till several years after the outlay.

lessee, the public responsibilities of the property are mainly discharged by the proprietor. When assistance is sought and obtained, as it is constantly obtained, for religious, or educational, or charitable, or other general purposes, it is from the lessor that the large proportion of such benefactions proceeds; and it is on the lessor that the public expectation is principally, though not always very reasonably, fixed.

In treating this, however, as a merely pecuniary question, they will have to consider whether the circumstances—first, that a tenure is favourable to the tenant and disadvantageous to the proprietor; second, that the tenant is left to act in the management of the property very much as he likes, while the proprietor is indifferent or neglectful (for the smallness of the fine compensating the outlay of the tenant, the latter has no claim on the ground of capital invested)—do or do not confer on the tenant any share in the ownership of the estate.

II. The lessees plead also the confidence founded on the almost uninterrupted duration of their tenure; the all but certainty of the periodical renewal; they plead the various pecuniary engagements which they have undertaken in that confidence; they speak of the homes of their forefathers, the scenes of their dearest associations.

On the other hand, it is argued by the lessors, that, in principle, it is very difficult to distinguish the case of these tenants from the case of any

leaseholder at raek-rent, or any tenant at will, who through the indulgenee, or indolcnce, or incapacity of two or thrce generations of landlords, has enjoyed—and sueh cases were not uncommon fifty years ago—a long and advantageous possession of his farm. He too was born in the house in which he lives, and his dearest assoeiations are connected with it. The rent required of himself and of his forefathers (whether annual or septennial, previous to or subsequent on cnjoyment, affcets not the question of the prineiple,) had been paid at the usual periods. He too thought that he was not likely to be disturbed in his possession, and made his peeuniary calculations accordingly. But when thc raee of the easy old gentlemen becomes at length extinct, it never enters into his imagination to claim any ownership in the property. Yet is his interest exaetly as beneficial as that of thc Church lessee, and it might bc supportcd by arguments of preeisely the same valuc, as far as the prineiple of the question is eoncerned.

So argue the lessors; and thc truth is, that the difference is in the cireumstanees. One of these is the longer duration of the possession. Another is the actual purchase by prepayment of that possession by the lessee. And though thc limit of the tenure is as strietly defined in thc lease, as that of an annual tenure could be, yet the temptations to found on it peeuniary transactions are much stronger in this case than in the othcr; and the faeility with which lessees have been per-

mitted to transfer and barter their interests in the property, has added to those temptations.

But the circumstance in which the chief difference consists is this: that the property in the one instance belongs to an individual, in the other instance to the Church. If the estates clogged with this unfortunate fine-tenure had belonged to Lord A. or to Sir B. C., the Legislature would never have been invited to interfere; the beneficial interest of the lessee would never have been mentioned*; and the leases would have been allowed to expire, had the proprietors so willed it, without any public remonstrance or remark.

But the Legislature are the trustees of the property of the Church, and they have no doubt

* In England, for the question is entirely English. In Ireland the very peculiar condition of landed property has occasioned great confusion as to the limits of rightful tenure, and somewhat strong and general claims on the part of the tenants. No proprietary revolution in Ireland can fairly be pleaded as a precedent for a similar proceeding here. But even in Ireland, the assertions of "Tenant Right" have been decidedly repudiated by the landlords, among whom one is particularly distinguished by some very judicious remarks on that subject. The observations addressed by Lord Londonderry (Feb. 29. 1848) to certain Wexford petitioners, are applicable to all descriptions of property, ecclesiastical or secular, English or Irish. "The idea," says his Lordship, "that seems to be abroad and encouraged by mistaken enthusiasts and philanthropists of the day, that tenants have any vested interests in their holdings, or that occupancy gives any right of permanent possession, denominated 'Fixity of Tenure,' are theories which I must ever most strongly oppose, &c." There is much more to the same effect.

the right to decide this question. And in so doing they will of course consider: —

The true foundations and equitable limits of the claims of the lessees.

The expediency of a great alteration in the nature of the tenure.

In considering the claims of the lessees, they will bear in mind that the moderate amount of the fine as compared with the proceeds of the estate, amply compensates the tenant for any outlay that his lease requires of him: and then they will ask themselves whether the easiness of a tenure or the length of a tenure can confer on the tenant any permanent ownership in the property.

But in inquiring into the expediency of a change it will be necessary to admit other considerations.

The present practice of renewal on fine, without being wholly satisfactory to the lessee, has produced, and is producing results disadvantageous both to the Church and to the property. Due regard being had to the various interests for the present involved in its continuance, it must, if possible, be at once extinguished.

Again: though the lessees possess no legal right in the property beyond the period of their leases, it is yet most desirable, nay, even equitable, that the lessors should treat with them liberally, and as with friends.

The leasehold property of the Church will not then be extricated from its present unfavourable

position without some compromise. A bad practice, which has prevailed for three centuries, can scarcely be discontinued without some sacrifice by the body, which has allowed it to last so long. Some expedient must be discovered, which will satisfy justice and produce eventual advantage to both parties.

For this object, no scheme can, perhaps, be proposed which will not be liable to some objection — certainly no scheme has yet been proposed which is not liable to many.

In the interests of the lessees are those who would compel the lessor to sell forthwith, at its present estimated value, whatever may be that estimate, that, which they call his "reversionary interest," but which is, in fact, the fee simple of his estates. Thus they would peremptorily dispossess him, on receiving some fractional portion of its value, — and the fraction is much contested by the actuaries — of the whole of his property. It is difficult to distinguish this project from a project of modified spoliation. To use compulsion at all in matters of property is a privilege which the Legislature always exercise with much caution and jealousy. But needlessly to compel the immediate sale of a most improveable and even improving property, is to inflict a manifest wrong on the proprietor. And when that property is in very large masses, and would consequently suffer depreciation from being hastily thrown into a limited market, the wrong amounts to robbery. It is clear

that compulsion, except provisionally, cannot enter into this question without great injustiee to the Chureh.

In the same intcrests arc those who would also at once dispossess the Chureh of its "reversionary intercst," and substitute an annual payment, to whieh the lands "enfranehiscd" would be subjeet. This seheme, in whatever shape it prescnts itself, is evcn more objeetionable than the other. In the other ease, the proprietors would reeeive at least some purehase-money, whieh might be again invested in safe and improvable property. In this case, they would be deprived of the whole substanee, and reeompensed by what would probably prove little better than a shadow. For, in the first place, it is to be expeeted that such payments would prcsently, as they might easily, be divertcd to other purposes. At any rate, it is well known, that no form of property is so unpopular and so liable to constant dispute and jeopardy, as eharges of this dcscription. They are considcred, not as debts, but as burdens on the land, — as taxes pressing pceuliarly on the agrieultural interest, — nay, evcn as taxes on eonseienee. And in this instance, as soon as the origin of this particular "burden," or "tax," should be removed from sight, and the memory of the eommutation should no longer be vcry recent, evcry year would give birth to reiterated struggles, local or parliamentary, or both, to cvade or altogether to shake off the obligation.

But this is not, perhaps, the greatest objection. It is not disputed, that the property of the Church is improving, in some places rapidly improving, even under its present tenure. The writer is informed that there is a very large capitular estate, which has doubled its value during the last twenty-five years, and that that value is steadily increasing. If, then, the proposed rent-charge had been fixed in 1824, the Church would have been receiving from this estate only half of what it will receive, should the rent-charge be fixed in 1849; and perhaps not a fourth of what will accrue to it, if the scheme should be deferred till the end of the century. And it is no argument that such improvements, which, under a better tenure, would have been still greater, have been made, and will continue to be made, principally by the outlay of the lessee, since the lessee willingly accepts the conditions, and regularly applies for the renewal of his lease.

Probably the rents reserved in the leases nearly represent the annual value of the several estates three hundred years ago. They now represent a small fractional part of that value. Yet, had the rent-charge proposed to be now substituted for the "reversionary interest" been substituted then, that fraction, even if it had existed so long, would have constituted the whole income at this time derived by the Church from those estates.

But, if the rent-charge should now be fixed at a value, by some per centage higher than the calcu-

lated value, in anticipation of the improvement of the property, the arrangement could be accepted by neither party — not only because such augmentation must be entirely arbitrary, but also because it would certainly operate unfairly either to the one or to the other — unfairly to the lessor, in cases where the estates are capable of great and cheap improvement — unfairly to the lessee, where the process would be expensive and the result doubtful.

A fluctuating rent-charge, varying with the varying value of the property, would assuredly be rejected at once, as an intolerable tax on improvement.

A rent-charge, fluctuating according to the prices of corn, or other produce, would be entirely inapplicable to houses; indeed it might, and probably would, act most unjustly on that description of property.

These are serious, if not conclusive objections. But the foundation of the argument is far deeper and more general. A charge on an estate can in no case be an equitable compensation for the estate. A fixed or fluctuating payment may be very fairly adopted in commutation of such a kind of property as tithe. It is then the substitution of one description of charge for another description of charge. But to propose it in exchange for the land itself, from which it is derived, is to meditate an irreparable wrong to the proprietors of the land; and the official announcement of such a scheme would

necessarily be met by an universal protest on their part.

Still another objection to the proposed rent-charge is to be found in the continual variations in the value of money. Hitherto the tendency, century after century, has been to a comparative depreciation of the precious metals; and, to all appearances, the time to come promises still more rapid alterations in the same direction. The reverse of this may happen; in which case the land might not afford sufficient security for the payment of the charge. But in either contingency a rent-charge would do injustice.*

There is no impartial man, combining and weighing the above objections, who will not perceive that they are conclusive against both the schemes under discussion; and the writer is aware of no proposed substitute for the fine-system, into which the one or the other of those schemes does not enter. But their unfairness will become still more evident to any landowner who shall consider them, not only in reference to the property of the Church, but also as they would operate if applied to his own estates.

In the interests of the lessors, a very simple expedient is proposed; namely, after compensating existing interests dependent on the continuance of the fine-system, to allow all the leases to expire.

There is no question that this is a perfectly legal solution of the difficulty, requiring no extraordinary

* See note at p. 13.

aid from the Legislature; and it has indeed been adopted with great advantage by some colleges, as well as by the crown and certain individual proprietors. It is likewise that solution most consistent with the intention of the statutes of Elizabeth. It is likewise that which would of all others be eventually most profitable to the Church. For though it might prove that the estates, during the later periods of several of the leases, would be much mismanaged, and would thus revert to the Church damaged and impoverished; yet a very few years, under good regulation, would repair all this mischief. And the mischief would, indeed, be quite insignificant, when compared with the permanent advantages of the free possession of the property, thus enfranchised and emancipated from its present servile tenure.

Yet it will be the opinion of most reasonable men, that this would be a harsh and not very charitable proceeding. Some consideration is due to the hereditary tenants of the Church. If not in law in equity, if not in equity in kindness, some regard should be paid to those who have been allowed, through so many generations, to look upon the probability of the renewal, if not as a right, at least as a fact; and who have bought and sold, and conducted their pecuniary calculations and transactions accordingly.

An intermediate arrangement must be devised. And surely it cannot be impossible so to respect and conciliate the interests of the lessees, as to

refrain from any violent invasion of the rights and possessions of the Church.

To this end the following suggestions are recommended to the serious consideration of those members of the Legislature, whose real and only wish it is to see justice done; and who form, if they will but think and act for themselves, and not be misled by sophistry or clamour, the great majority of both Houses.

In the first place, provision will be made for the proper performance of divine service; for the sustentation and decoration of the cathedrals, and for other objects of necessary or customary expenditure; also, for the security of those interests which, whether under the old system, or under the new distribution of incomes, are dependent, more or less, on the payment of fines.* This done, it is essential that the renewal by fine be altogether discontinued.

There will still remain fourteen years, before any lease, regularly renewed, shall expire; twenty-one years, before all shall have expired. It may be well to employ that interval as follows: —

To pass an act forthwith to permit and facilitate mutual sales or exchanges of the fee simple of

* Probably the necessary sum will be best raised by loan. The amount required will annually diminish; and, in some cases, the resources of the See or Chapter, exclusive of the portion proceeding from fines, may possibly even now be found nearly sufficient to meet the expences in question.

estates to lessees, and of the lessees' interests to lessors.

To establish at the same time a permanent Central Board, by which all such contracts must be approved.

Provisional.

If, after the lapse of seven years, it shall appear that, comparatively, few such contracts have been effected, it will be proper to confer on that Board the power of compelling sales, on terms then to be prescribed by the Legislature, in certain cases, where advantage would, in the opinion of the Board, arise to both parties from such sale, and where reasonable overtures have been made by either party, and rejected by the other.

Forthwith, to empower the said Board to facilitate the renewal of leases at any time before their expiration — no longer by fine, and for periods not exceeding twenty-one years, but on terms provided by the act, and favourable to the lessees.

If any leases shall, notwithstanding, expire, the refusal of tenancy will in every case be offered to the late lessees severally, either on advantageous leases, or at annual rents lower by for the first years, than the estimated annual value of the several estates.

The details of an enactment, founded on the above suggestions, might be arranged without

much difficulty; but of course it would be inexpedient to enter into them here.*

Its probable result would be — not perhaps in the first instance to satisfy the advocates either of the one party or of the other — but ought legislation to be directed to any such purpose? not this — but temperately, and by the operation of good sense, and by the moderate assertion of fair claims, under sufficient control, through half a generation, to abolish the present precarious and anomalous connection between the lessors and the lessees; and insensibly to substitute another condition — it might be of connection, or it might be of independence — but in either case, incomparably more advantageous to both.

There can be no question that, during the abovementioned period, many sales would be effected on both sides. In many instances the lessee would by purchase become the owner of the freehold; in many the lessor would by purchase recover the unfettered possession of his property. Both would then prosecute improvements. The Church would suffer considerably in the extent of her estates; but she would gain much more through a gradual and amicable change in the tenure of those which

* What is here suggested regarding the twenty-one years' lease applies to all properties leased by fine, to houses and minerals as well as to lands. In the case of houses, a twenty-one years' tenure would be generally preferable to one for forty years; and, as to minerals, the fixed payment and rental tenure is far more equitable than the tenure by fine.

would remain to her. Without any violence, or any semblance of injustice, the lessee would obtain the satisfaction of every equitable claim; and, even in cases where no sale on either side, nor any other arrangement, should have taken place previous to the expiration of the lease, the relation between the parties might, if he chose it, still continue, on an altered footing — on a footing favourable to the lessee as a tenant, and far more advantageous than the present tenure to the Church as the proprietor.

By adopting, with improvements no doubt, some such course as is here suggested, the Legislature will revert to, and carry out, the intention of the original statutes. They will do justice to every reasonable pretension of the ecclesiastical tenants. And, what is likewise important, they will protect from fruitless and discreditable dissipation that property — which some gentlemen consider as the sacred, inalienable, intangible possession of the Church; which others consider as property held in trust by the State for religious purposes; which others consider as public property, lawfully applicable to any public purpose; but which all are agreed in resolving to preserve in its integrity, as a substantial national deposit, confided to their patriotism and their honour.

THE END.

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